

contracting officer shall provide OGC-BAL with the pertinent documents with the submission of each proposed final decision.

(a)(4)(v) When using the paragraph in FAR 33.211 (a)(4)(v), the contracting officer shall insert the words "Armed Services" before each mention of the term "Board of Contract Appeals".

(h) At any time within the period of appeal, the contracting officer may modify or withdraw his/her final decision. If an appeal from the final decision has been taken to the ASBCA, the contracting officer will forward his/her recommended action to OGC-BAL with the supplement to the contract file which supports the recommended correction or amendment.

### **333.212 Contracting officer's duties upon appeal.**

(a) Appeals shall be governed by the rules set forth in the "Rules of the Armed Services Board of Contract Appeals", or by the rules established by the U.S. Court of Federal Claims, as appropriate.

(b) OGC-BAL is designated as the Government Trial Attorney to represent the Government in the defense of appeals before the ASBCA. A decision by the ASBCA will be transmitted by the Government Trial Attorney to the appropriate contracting officer for compliance in accordance with the ASBCA's decision.

(c) If an appeal is filed with the ASBCA, the contracting officer shall assemble a file within 30 days of receipt of an appeal, or advice that an appeal has been filed, that consists of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent modifications, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witness on the matter in dispute made

prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent. The contracting officer shall furnish the appeal file to the Government Trial Attorney for review and approval. After approval, the contracting officer shall prepare four copies of the file, one for the ASBCA, one for the appellant, one for the Government Trial Attorney, and one for the contracting office.

(d) At all times after the filing of an appeal, the contracting officer shall render whatever assistance is requested by the Government Trial Attorney. When an appeal is set for hearing, the concerned contracting officer, acting under the guidance of the Government Trial Attorney, shall be responsible for arranging for the presence of Government witnesses and specified physical and documentary evidence at both the pre-hearing conference and hearing.

(e) If a contractor which has filed an appeal with the ASBCA elects to accept fully the decision from which the appeal was taken, or any modification to it, and gives written notification of acceptance to the Government Trial Attorney or the concerned contracting officer, the Government Trial Attorney will notify the ASBCA of the disposition of the dispute in accordance with Rule 27 of the ASBCA.

(f) If the contractor has elected to appeal to the U.S. Court of Federal Claims, the U.S. Department of Justice will represent the Department. However, the contracting officer shall still coordinate all actions through OGC-BAL.

### **333.212-70 Formats.**

(a) The following format is suggested for use in transmitting appeal files to the ASBCA:

Your reference: \_\_\_\_\_  
(Docket No.)

(Name)

Recorder, Armed Services Board of Contract Appeals

Skyline Six  
5109 Leesburg Pike  
Falls Church, Virginia 22041

Dear (Name):

Transmitted herewith are documents relative to the appeal under Contract No. \_\_\_\_\_ with the \_\_\_\_\_